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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Ebert
SERIAL NO.: 10/689,230
FILED: 10/20/2003
GROUP ART: 3676
EXAMINER: Estremsky, Gary Wayne
FOR: Door Lever Construction With Fragile Handle

9/2

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Pursuant to the Notice of Appeal filed June 22, 2005, and pursuant to the Notification of Non-Compliant Appeal Brief mailed November 16, 2005, appellant now resubmits its brief. Fees in the amount of \$500.00 may be charged to Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds. Appellant believes that no additional fees are necessary, however, the Commissioner is authorized to charge the same deposit account for any additional fees, or to credit the account for any overpayment.

Real Party in Interest

This application is assigned to Baldwin Hardware Corporation. At the time of filing, this was within the Masco Corporation family of companies. However, Black & Decker Corporation has now purchased Baldwin Hardware Corporation, and also this patent application. Thus, the real party in interest is Black & Decker Corporation, or one of its wholly owned companies.

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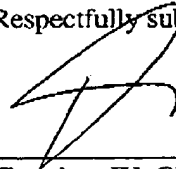
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CONCLUSION

For the reasons set forth above, the rejection of all claims is improper and should be reversed. Such action is solicited.

Respectfully submitted,

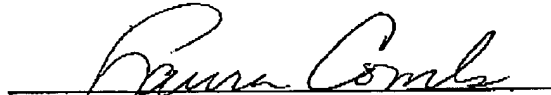


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Dated: December 16, 2005

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States patent and Trademark Office, fax number (571) 273-8300, on December 16, 2005.


Laura Combs

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Related Appeals and Interferences

There are no prior or pending appeals, interferences, or judicial proceedings relating to, or which may directly affect or may be directly effected by, or have a bearing on the Board's decision in this appeal.

Status of Claims

Claims 1-11 stand finally rejected. Claims 1 and 5 stand finally rejected under 35 USC §102, while the other claims stand finally rejected under 35 USC §103.

Status of Amendments

No amendments after final rejection were submitted in this application.

Summary of Claimed Subject Matter

This application generally relates to a unique way of forming a door handle from a fragile material such as crystal glass. An end cap 28 is received on threads on the end of a bolt 26, which extends through a hollow bore in a fragile handle member 24. An opposed end of the bolt is secured to a shank to be attached to a door.

Summary of Independent Claim 1 and its Dependent Claims

Independent claim 1 requires there be a shank (22, see ¶ 11) to be attached to a door at one end with the shank having an opposed end. The claim further requires there be a handle (24) attached to the opposed end of the shank, and that the handle is formed of a material that is more fragile than a material forming the shank.

Dependent claim 3 (to claim 1) requires that the handle include a central bore (25) with the bolt (26) extending through the central bore. The bolt is recited as being secured to the shank at one end, and receiving a cap at a second opposed end such that the handle is captured between the cap and the shank (28, ¶ 12).

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Dependent claim 4 (to claim 3) requires that the central bore has a cross-sectional area that is less than half of the cross-sectional area of a portion of the handle that abuts the end face of the shank (§ 14).

Dependent claim 7 (to claim 6) recites that a cap (28) is attached to the handle and has a shallow pocket (42, § 12) with a handle extending into the shallow pocket.

Dependent claim 11 (to claim 3), recites that the cap (28, § 12) has threads with the cap threaded onto the bolt such that the handle is held in compression between the shank and the cap by the cap being tightened on the bolt.

Summary of Independent Claim 8 and its Dependent Claims

Independent claim 8 requires there be a metal shank (22, § 11, 12, 14) to be attached to the door, and a handle attached to an opposed end of the shank. The claim requires the handle is formed of crystal and has a central bore (25) with a bolt (26) extending through the central bore. The claim requires the bolt is secured to the shank at one end, and the bolt receives a cap (28) at a second opposed end with the handle captured between the cap and the shank. The claim requires that the bore has a cross-sectional area that is less than half the cross-sectional area of the end portion of the handle that abuts the end face of the shank (§ 14). The claim further requires the shank and the cap each have a shallow pocket (30, 42 § 12) defined by an end face with the handle extending into both the shallow pockets.

Dependent claim 10 (to claim 8) recites that the cap (28) has threads with the cap being threaded onto the bolt such that the handle is held in compression between the shank and the cap.

Grounds of Rejection to be Reviewed on Appeal

The claims 1 and 5 stand finally rejected under 35 USC §102(b) as being anticipated by United States Patent 5,797,422 (Tokarz).

Claim 2 stands rejected under 35 USC §103 as being obvious over Tokarz. Notably, this rejection is not contested separate from the rejection of claim 1.

Claims 3, 4 and 10 stand finally rejected under 35 USC §103 as being obvious over Tokarz taken with U.S. Patent 2,105,617 (Shaw).

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Claim 6 stands finally rejected under 35 USC §103 as being unpatentable over Tokarz in view of U.S. Patent 1,829,365 (Meyer). Notably, this rejection is not contested separate from the rejection of the independent claim 1.

Claim 7 stands finally rejected under 35 USC §103 as being unpatentable over Tokarz taken with Meyer and further with Shaw.

Claims 8, 9 and 11 stand finally rejected under 35 USC §103 as having been obvious over Tokarz, in view of Shaw, and further in view of Meyer.

Arguments

Appellant's invention relates to a doorknob. The primary reference supplied by the examiner is not a doorknob. Further, and in general, all of the examiner's proposed modifications are simply not supported by the prior art.

The 35 USC §102 Rejection of Claims 1 and 5

Claim 1 requires that there be a shank to be attached to a door. The claim further requires that the handle is formed of a material that is more fragile than a material forming the shank.

The examiner argues that this claim is anticipated by the Tokarz, U.S. Patent 5,797,422. However, Tokarz is a faucet handle. Its "shank" is not to be attached to a door. In fact, a faucet handle performs a much different function than a door handle, and must move internal flow components.

Further, while some disclosure is made of materials for portions of the claimed handle of Tokarz, the specific arrangement of a handle, which is formed of a material more fragile than the material forming the "shank" is not disclosed. That is, nothing within Tokarz specifically discloses an arrangement wherein the shank is formed of a first material and the handle is formed of a second material that is more fragile than the first material.

For these reasons, the claim 1 is not anticipated by Tokarz. This failure in the reference to meet the claims should result in all rejections being reversed.

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The 35 USC §103 Rejection of Claim 2

Claim 2 is rejected over the Tokarz patent, taken with the known general art. Appellant does not separately contest this rejection.

The 35 USC §103 Rejection of Claims 3 and 7

The examiner rejects these claims by adding the Shaw U.S. Patent 2,105,617 to Tokarz. However, the Shaw patent is not properly combined with Tokarz as argued by the examiner. The Tokarz device in Figure 4 includes a bolt head 46, 48, which allows "simple interchange" of varying handle bodies for decorative purposes.

The examiner proposes to modify this reference by the Shaw patent to have an end cap such as Shaw end cap 41. The Shaw device carries a spring, a separate collar 43, and is secured through the separate collar 43 to a bolt 10 that will be secured within door opening hardware.

The examiner argues that by utilizing a separate cap to cover the bolt of the Tokarz patent, one can ensure that "no unacsthetically unwanted screw slots are visible." However, the easy changeability provided by Tokarz would be ruined by the modification. There is nothing within Tokarz that would lead one to believe that there would be anything "aesthetically unwanted." In fact, it appears that the bolt supplied by Tokarz already has a somewhat decorative configuration.

Moreover, the complex arrangement of a spring, collars, etc. would complicate the Tokarz device, again with no real benefit.

In sum, this proposed combination is improper, and is truly only supported by applicant's disclosure.

The 35 USC §103 Rejection of Claim 4

This claim is allowable for the reasons set forth above with regard to claim 3, in that claim 4 depends to claim 3. Claim 4 is also allowable in that it also requires a particular relationship with regard to a central bore in the handle. In particular, the goal of this invention is to have a crystal handle. The bore is required to allow passage of the bolt 26. However, and as

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recited in the claims, this bore is small in comparison to a cross-sectional area of a portion of the handle that abuts the end face of the shank.

The examiner realizes the Tokarz reference cannot meet this limitation. However, he appears to rely upon some arbitrarily chosen cross-section through the opening 38 in Tokarz.

The examiner's exact position on meeting this limitation is still unclear, however, what is clear is that Tokarz cannot meet this limitation.

The 35 USC §103 Rejection of Claim 10

Claim 10 is dependent to claim 8. Claim 8 adds limitations similar to those mentioned above with regard to claim 4. While the examiner has rejected claim 10 over only Tokarz and Shaw, claim 8, its parent claim, is also rejected over the third reference, to Meyer. Appellant is not separately contesting the addition of the Meyer reference. However, claim 10 further requires that the cap has threads, and the cap is threaded onto the bolt such that the handle is held in compression between the shank and the cap by the cap being tightened on the bolt.

Tokarz does not meet this limitation. Shaw also does not meet this limitation in any way, in that nothing is held between the cap 41 and another element.

The examiner argues that Tokarz holds a handle in compression. However, the cap of Shaw does not provide this same feature. The cap must meet the claimed limitations. Moreover, there is no specific disclosure in Tokarz that it does either.

As such, it appears to be mere speculation that the examiner is relying upon to meet the claim.

The 35 USC §103 Rejection of Claim 6

Claim 6 is rejected over Tokarz further taken with Meyer. Claim 6 is allowable for the reasons set forth above with regard to claim 1. However, appellant is not separately contesting the addition of Meyer to the Tokarz reference.

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The 35 USC §103 Rejection of Claim 7 is Contested

Claim 7 adds limitations similar to those mentioned above with regard to claim 3. Claim 7 is rejected over Tokarz, Meyer and Shaw. As mentioned, appellant is not contesting the addition of the Meyer reference. However, Shaw is not properly combined with Tokarz to reject claim 7. The reasons are similar to those mentioned above with regard to claim 3.

The 35 USC §103 Rejection of Claims 8, 9 and 11

Claims 8, 9 and 11 are rejected over Tokarz, Shaw and Meyer. The rejection of claim 8 is improper for reasons similar to that mentioned above with regard to the rejection of claim 4. Appellant is not separately contesting the addition of the Meyer reference, however, what the examiner is relying upon in Tokarz and Shaw to provide to meet the claim, is not a proper rejection for the reasons set forth above with regard to claim 4. That is, the claim requires a particular relationship with regard to the cross-sectional area of the bore and an end portion of the handle. The references do not meet this limitation. As such, these claims are allowable.

The 35 USC §103 Rejection of Claim 11

The rejection of claim 11 is improper for the exact reasons set forth above with regard to the rejection of claim 10. However, this rejection is separately contested in that claim 11 is dependent directly back to claim 3, and thus does not include the limitations with regard to the cross-sectional area of the bore. That is, claim 11 is allowable for reasons in addition to those set forth above with regard to claim 3, in that claim 11 requires that the cap has threads, the cap is threaded onto a bolt, and the handle is held in compression between the shank and the cap, by the cap being tightened.

Tokarz cannot meet this limitation. Shaw does not meet this limitation, and nothing is held between the cap 41 of Shaw and another element. The examiner speculates that Tokarz might hold a handle in compression, however, the claim requires the cap hold the handle in compression. There is nothing in either reference which can meet this limitation.

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CLAIMS APPENDIX

1. A lever for a door comprising:
a shank to be attached to a door at one end, said shank having an opposed end;
a handle attached to said opposed end of said shank, said handle being formed of a material that is more fragile than a material forming said shank.
2. A lever as set forth in claim 1, wherein said handle is formed of a crystal material.
3. A lever as set forth in claim 1, wherein said handle includes a central bore, and a bolt extends through said central bore, said bolt secured to said shank at one end, and extending through said bore, said bolt receiving a cap at a second opposed end such that said handle is captured between said cap and said shank.
4. A lever as set forth in claim 3, wherein said central bore in said handle has a cross-sectional area that is less than half of the cross-sectional area of a portion of said handle that abuts said end face of said shank.
5. A lever as set forth in claim 1, wherein said shank includes a shallow pocket defined by an end face and an inner side wall, said handle extending into said shallow pocket, and said handle having an end face abutting said end face of said shank pocket, and said handle having an outer side wall in engagement with said inner side wall of said shank.

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6. A lever as set forth in claim 5, wherein said inner side wall of said shank and said outer side wall of said handle are both frustro-conical.

7. A lever as set forth in claim 6, wherein a cap is attached to said handle, and has a shallow pocket with an end face and a side wall, and said handle further extending into said shallow recess in said cap.

8. A lever for a door comprising:

a metal shank to be attached to a door at one end, said shank having an opposed end;

a handle attached to said opposed end of said shank, said handle being formed of crystal, said handle including a central bore, and a bolt extending through said central bore, said bolt secured to said shank at one end, and extending through said bore, said bolt receiving a cap at a second opposed end such that said handle is captured between said cap and said shank;

said bore having a cross-sectional area that is less than half of the cross-sectional area of an end portion of said handle that abuts said end face of said shank; and

said shank and said cap each including a shallow pocket defined by an end face and an inner side wall, said handle extending into both said shallow pockets, and said handle having end faces abutting said end face of said shank pockets, and said handle having outer side walls in engagement with said inner side walls of said shallow pockets, said inner side wall of said shallow pockets and said outer side wall of said handle being frustro-conical.

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9. A lever for a door as set forth in claim 8, wherein said bore in said handle has a cross-sectional area that is less than half of the cross-sectional area of a portion of said handle that abuts said end face of said shank.

10. A lever for a door as set forth in claim 8, wherein said cap has threads, and said cap being threaded onto said bolt, such that said handle being held in compression between said shank and said cap by said cap having been tightened on said bolt.

11. A lever as set forth in claim 3, wherein said cap has threads, and said cap being threaded onto said bolt, such that said handle being held in compression between said shank and said cap by said cap having been tightened on said bolt.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.